

How is MBE/WBE/DBE Participation Counted towards goals?

- (a) When a MBE/WBE/DBE participates in a contract, you count only the value of the work actually performed by the MBE/WBE/DBE toward MBE/WBE/DBE goals.
 - (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the MBE/WBE/DBE's own forces. Include the cost of supplies and materials obtained by the MBE/WBE/DBE for the work of the contract, including supplies purchased or equipment leased by the MBE/WBE/DBE (except supplies and equipment the MBE/WBE/DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - (2) Count the entire amount of fees or commissions charged by a MBE/WBE/DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, toward MBE/WBE/DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a MBE/WBE/DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward MBE/WBE/DBE goals only if the MBE/WBE/DBE's subcontractor is itself a MBE/WBE/DBE. Work that a MBE/WBE/DBE subcontracts to a non-MBE/WBE/DBE firm does not count toward MBE/WBE/DBE goals.
- (b) When a MBE/WBE/DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE/DBE performs with its own forces toward MBE/WBE/DBE goals.
- (c) Count expenditures to a MBE/WBE/DBE contractor toward MBE/WBE/DBE goals only if the MBE/WBE/DBE is performing a commercially useful function on that contract.
 - (1) A MBE/WBE/DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE/WBE/DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a MBE/WBE/DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the MBE/WBE/DBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A MBE/WBE/DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE/WBE/DBE participation. In determining whether a MBE/WBE/DBE is such an extra participant, you must examine similar transactions, particularly those in which MBE/WBE/DBEs do not participate.
 - (3) If a MBE/WBE/DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the MBE/WBE/DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
 - (4) When a MBE/WBE/DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the MBE/WBE/DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

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- (5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration.
- (d) Use the following factors in determining whether a MBE/WBE/DBE trucking company is performing a commercially useful function:
 - (1) The MBE/WBE/DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting MBE/WBE/DBE goals.
 - (2) The MBE/WBE/DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (3) The MBE/WBE/DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates, using drivers it employs.
 - (4) The MBE/WBE/DBE may lease trucks from another MBE/WBE/DBE firm, including an owner-operator who is certified as a MBE/WBE/DBE. The MBE/WBE/DBE who leases trucks from another MBE/WBE/DBE receives credit for the total value of the transportation services the lessee MBE/WBE/DBE provides on the contract.
 - (5) The MBE/WBE/DBE may also lease trucks from a non-MBE/WBE/DBE firm, including an owner-operator. The MBE/WBE/DBE who leases trucks from a non-MBE/WBE/DBE is entitled to credit for the total value of transportation services provided by non-MBE/WBE/DBE lessees not to exceed the value of transportation services provided by MBE/WBE/DBE-owned trucks on the contract. Additional participation by non-MBE/WBE/DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.
 - (6) For purposes of this paragraph (d), a lease must indicate that the MBE/WBE/DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the MBE/WBE/DBE, so long as the lease gives the MBE/WBE/DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the MBE/WBE/DBE.
- (e) Count expenditures with MBE/WBE/DBEs for materials or supplies toward MBE/WBE/DBE goals as provided in the following:
 - (1) (i) If the materials or supplies are obtained from a MBE/WBE/DBE manufacturer, count 100 percent of the cost of the materials or supplies toward the MBE/WBE/DBE goals.
 - (ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - (2) (i) If the materials or supplies are purchased from a MBE/WBE/DBE regular dealer, count 60 percent of the cost of the materials or supplies toward MBE/WBE/DBE goals.
 - (ii) For the purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

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- (A) To be regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale, or lease of the products in question.
 - (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad-hoc or contract-by-contract basis.
 - (C) Packagers, brokers, manufacturers' representatives, or other persons *who arrange or expedite transactions* are not regular dealers within the meaning of this paragraph (e)(2).
- (3) With respect to materials or supplies purchased from a MBE/WBE/DBE which is neither a manufacturer or a regular dealer, count the entire amount of the fees or commissions charged for the assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward MBE/WBE/DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward MBE/WBE/DBE goals, however.
- (f) If a firm is not currently certified as a MBE/WBE/DBE in accordance with the certification standards of RIDOA at the time of the execution of the contract, do not count the firm's participation toward any MBE/WBE/DBE goals, except for the following:**
- (1) If the MBE/WBE/DBE's ineligibility is caused solely by its having exceeded the size standards during the performance of the contract, you may continue to count its participation on that contract toward the overall and contract goals.
 - (2) If a contractor has executed a contract with a certified firm prior to the MBE/WBE/DBE firm being notified of its ineligibility, you may count the use of this firm on the contract and may continue to receive credit toward your MBE/WBE/DBE goal for the firm's work.
- (g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
- (h) Do not count the participation of a MBE/WBE/DBE subcontractor toward the contractor's final compliance with its MBE/WBE/DBE obligations on a contract until the amount being counted has actually been paid to the MBE/WBE/DBE.